APPENDIX E

Injunctive and Cease and Desist Powers Available to Federal Administrative Agencies

The Attachment to this Appendix represents a survey of 19 Federal departments and regulatory agencies. It fully demonstrates the care and precision with which Congress has defined the injunctive and cease and desist powers which may be exercised by the agencies themselves and injunctive powers which are exercised by the courts upon petition of the agencies.

The survey illustrates the great diversity of granted powers. The powers are clearly responsive in each case to the particular needs of the agency involved and the areas of responsibility delegated to it. In no case is a general injunctive or cease and desist power granted to an agency or department without specific statutory guidelines regarding the criteria and procedures for its exercise. In all instances, both the criteria for the invocation of these powers and the detailed procedures in connection therewith are specified by Congress, rather than being left to regulations by the particular department or agency.

Statutory Criteria for Invocation of Powers[1]

The statutes spell out with great specificity the circumstances or criteria under which the agencies concerned may exercise these powers. In some cases, the exercise of cease and desist power, or the right to petition a court for an injunction, is limited to cases of statutory violation.[2] More typically, however, cease and desist powers may be exer-

[1] Citations to statutes referred to herein are in abbreviated form. Complete citations appear in the Attachment hereto.

[2] Department of Agriculture, 7 U.S.C. §1599; Department of Health, Education and Welfare, 21 U.S.C. §§332, 344, 381; Federal Trade Commission, 15 U.S.C. §§21, 45(b), 53, 68e(b), 69g(b), 70f, 1195(a); Interstate Commerce Commission, 49 U.S.C. §§5(7), 5(8), 1011(d), 1017(b); National Labor Relations Board, 29 U.S.C. §§160(1), 178, 217.

cised where a violation of a statute, or a regulation or order of the agency, has occurred.[3] In some instances, Congress has also authorized the exercise of this power where a license issued by the agency is not being conformed with,[4] or where other conditions, imposed by the agency in writing, are violated.[5]

While the statutes usually require a violation of a specific prohibition imposed by statute or a regulation, Congress has in a few instances permitted the invocation of these powers for violations defined with lesser specificity, such as "unfair competition" in the grant of powers to the Federal Trade Commission,[6] and "unsafe and unsound practices" in the grant of powers to the Federal Home Loan Bank Board[7] and related agencies.[8]

The statutes also spell out whether the exercise of the cease and desist authority or the petitioning for judicial in-

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[3] Atomic Energy Commission, 42 U.S.C. §2280; Civil Aeronautics Board, 49 U.S.C. §§1482(c), 1487; Federal Communications Commission, 47 U.S.C. §312(b); Department of Agriculture, 7 U.S.C. §1599; Federal Home Loan Bank Board, 12 U.S.C. §1464(d); Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency, 12 U.S.C. §1818; Federal Power Commission, 16 U.S.C. §825m; Securities Exchange Commission, 15 U.S.C. §80a-41; Small Business Administration, 15 U.S.C. §687a(b).

[4] Federal Communications Commission, 47 U.S.C. §312(b).

[5] Federal Home Loan Bank Board, 12 U.S.C. §1464(d); Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency, 12 U.S.C. §1818; Federal Savings and Loan Insurance Corporation, 12 U.S.C. §1730.

[6] 15 U.S.C. §45(b).

[7] 12 U.S.C. §1464(d).

[8] Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency, 12 U.S.C. §1818; Federal Savings and Loan Insurance Corporation, 12 U.S.C. §1730.

junctive relief may be undertaken with regard to past violations only,[9] or whether it may be utilized to prevent prospective violations as well.[10]

Significantly, therefore, while a number of agencies are permitted to exercise such powers when a person "is about to engage" in an act violative of a statute, regulation or order,[11] the applicability of the cease and desist powers granted to the FCC are specifically restricted to *past* violations.[12] The power is further limited to cases where there is a violation of the terms of the license involved, the criminal law, or any rule or regulation of the Commission authorized by the Communications Act or United States treaty; it does not extend to any other circumstance.

Statutory Procedure in the Exercise of the Power

The statutes display both a great specificity and a wide diversity in the procedures to be utilized by the agencies

[9] Civil Aeronautics Board, 49 U.S.C. §1482; Department of Agriculture, 7 U.S.C. §§193, 194; Federal Communications Commission, 47 U.S.C. §312; Federal Maritime Commission, 46 U.S.C. §816; Department of Health, Education and Welfare, 21 U.S.C. §332; Interstate Commerce Commission, 49 U.S.C. §§5(7), 5(8), 16(12), 1011(d); National Labor Relations Board, 29 U.S.C. §§ 160(j), 217; Securities Exchange Commission, 15 U.S.C. §80a-35; Small Business Administration, 15 U.S.C. §687a; Tennessee Valley Authority, 16 U.S.C. §831y-1.

[10] Atomic Energy Commission, 42 U.S.C. §2280; Commission on Civil Rights, 42 U.S.C. §1971(c); Federal Home Loan Bank Board, 12 U.S.C. §1464(d); Federal Savings and Loan Insurance Corporation, 12 U.S.C. §1730; Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency, 12 U.S.C. §1818; Federal Power Commission, 16 U.S.C. §825m; Federal Trade Commission, 15 U.S.C. §53; National Labor Relations Board, 29 U.S.C. §178; Securities Exchange Commission, 15 U.S.C. §77t(b); Small Business Administration, 15 U.S.C. §687c.

[11] *Ibid.*

[12] 47 U.S.C. §312(b).

in the exercise of cease and desist powers or request for injunctive relief. Several statutory enactments require that whenever there is a violation calling for injunctive-type orders, the agency concerned may not act directly, but rather must bring action in a United States court for the issuance of such orders.[13] Other agencies are required to report violations to the President,[14] or are authorized to request the Attorney General to institute court action on their behalf. in order to enforce compliance with the statute or agency regulation.[15]

Several agencies are granted the power to issue cease and desist orders on their own behalf.[16] And in several of these cases, the statute further provides that such cease and de-

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[13]Small Business Administration, 15 U.S.C. §687c(a); Federal Power Commission, 16 U.S.C. §825m; Federal Trade Commission, 15 U.S.C. §§53, 68e(b), 69g(b), 70f(a), 1195(a); Department of Health, Education and Welfare, 21 U.S.C. §332; Interstate Commerce Commission, 49 U.S.C. §§5(8), 1017(b); National Labor Relations Board, 29 U.S.C. §§160(j), 217; Securities Exchange Commission, 15 U.S.C. §§80a-35, 80a-41, 77t(b), 78u(e), 79r(f), 80b-9(e); Tennessee Valley Authority, 16 U.S.C. §831y-1.

[14]National Labor Relations Board, 29 U.S.C. §178.

[15]Atomic Energy Commission, 42 U.S.C. §2280; Commission on Civil Rights, 42 U.S.C. §1971(c).

[16]Federal Trade Commission, 15 U.S.C. §45(b); Civil Aeronautics Board, 49 U.S.C. §1381; Federal Trade Commission, 15 U.S.C. §21; Department of Agriculture, 7 U.S.C. §§ 193, 194, 1599; Federal Communications Commission, 47 U.S.C. §312; Federal Home Loan Bank Board, 12 U.S.C. §1464(d); Federal Savings and Loan Insurance Corporation, 12 U.S.C. §1730; Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency, 12 U.S.C. §1818; Federal Maritime Commission, 46 U.S.C. §816; Federal Trade Commission, 15 U.S.C. §§21, 45(b); Interstate Commerce Commission, 15 U.S.C. §21; National Labor Relations Board, 29 U.S.C. §160(c); Small Business Administration, 15 U.S.C. §687a.

sist orders may be enforced through agency application to the courts for injunctive relief.[17]

In all cases where a Federal agency is granted cease and desist powers, however, such powers may be exercised only after proper notice and the right to a hearing are accorded the parties concerned. The FCC statute,[18] for example, specifically requires that a notice of at least thirty (30) days be given prior to the hearing. And only when safety of life or property is involved may shorter notice be given.

Some of the statutes which grant agencies cease and desist powers recognize that emergency action may be required in particular cases. In all such instances, however, the statutes specifically provide that pending a cease and desist proceeding by the agency, action may also be instituted by the agency in the appropriate Federal Court for a temporary injunction.[19]

Moreover, the statutes authorizing interim relief through the courts often prescribe prerequisites to the granting of such injunctions—a showing of irreparable injury, the filing of a security bond, and a strict limitation (e.g., to five (5) days) on the duration of the temporary order.[20] The rights of the restrained party are further protected by a statutory requirement that appeals from such judicial orders should be given precedence over all other cases.[21] Even absent special statutory prerequisites to the issuance of preliminary

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[17]Civil Aeronautics Board, 49 U.S.C. §1487; Interstate Commerce Commission, 49 U.S.C. §16(12); Small Business Administration, 15 U.S.C. §687c.

[18]47 U.S.C. §§312(b), (c).

[19]Department of Agriculture, 7 U.S.C. §193; Federal Trade Commission, 15 U.S.C. §§53, 1195(a); National Labor Relations Board, 29 U.S.C. §160(1).

[20]National Labor Relations Board, 29 U.S.C. §107.

[21]*Id.* §110.

injunctions and temporary restraining orders, the exercise of these powers by Federal courts is limited by the requirements of Rule 65 of the Federal Rules of Civil Procedure, 28 U.S.C., which imposes both notice and time limitations.

There is only *one exception* to the foregoing requirement that cease and desist powers not be exercised without a hearing and that interim injunctive relief be obtained from the courts. Provision for an emergency cease and desist order by the Federal Home Loan Bank Board is made by the Financial Institutions Supervisory Act of 1966 in the specific instance where the violation is likely to cause insolvency or a substantial dissipation of the assets of the association, or is likely otherwise seriously to prejudice the interest of the savings account holders.[22] Significantly, however, this exercise of emergency powers by a Federal agency without prior hearing or resort to the courts is *specifically provided for* by Congress, and is a modification of the earlier more drastic Bank Board power—to take over actual management of a financial institution through the appointment of a supervisory representative.[23]

The care with which these extraordinary powers are defined is illustrated by the legislative history of the new Federal Home Loan Board law.[24] In support of the proposed measure, the Senate Report cited a letter from the Secretary of the Treasury and other officials to the effect that:

> Existing remedies have proven inadequate. On the one hand they may be too severe for many situations, such as taking custody of an institution or terminating its insured status. On the other they may be so time consuming and cumbersome that substantial injury occurs to the institution before remedial action is effected.

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[22] 12 U.S.C. §1464(d).

[23] Act of June 13, 1933, ch. 64, §5, 48 Stat. 132. (See Attachment, paragraphs 5.b.; 5.c.)

[24] *Supra* note 22.

S. Rep. No. 1482, 89th Cong., 2d Sess. 5 (1966). Furthermore, the Committee's summary of the proposed new enactment clearly noted, with regard to the issuance of temporary cease and desist orders, that in advance of an administrative hearing,

> The Board would have discretionary authority to issue such orders whenever it determined that the continuation of such violations or practices is likely to insolvency or substantial dissipation of assets or earnings of the association, or is likely to otherwise seriously prejudice the interests of savings account holders. The change in the language of the original bill from "could cause" to "is likely to cause" insolvency is designed to reflect the committee's intent that the possibility of such consequences be a reasonable one and not merely a theoretical one, but it is not intended to amount to a required showing of definite probability.
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> . . . .
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> However, an association could, within 10 days after service of a temporary cease-and-desist order, apply to the proper U.S. district court for a stay of the order pending the completion of the administrative proceedings pursuant to the notice of charges against the association . . . . In ruling upon any such application, the district courts will, of course, be guided by the traditional tests employed in actions for temporary or preliminary relief from administrative agency action when the public interest is involved.

Id. at 11.

In summary, the attached survey establishes that in no instance is an agency permitted to exercise cease and desist powers unless a person has violated, or is about to violate, an existing statute, rule, regulation or other pre-existing requirement. Some agencies are not granted cease and desist powers, but must rely upon the courts for injunctive relief. Others are granted the power to issue cease and desist or-

ders, but only after according affected persons notice and a hearing. For interim relief, pending a hearing, agencies must resort to the court and petition for temporary injunctive relief. Only the Federal Home Loan Bank Board and related agencies have been authorized, under specified circumstances, to issue a temporary cease and desist order without notice and hearing. And in those instances, the statute specifically provides for the stay of such orders by a Federal District Court on application filed by the affected party within ten (10) days.

APPENDIX E
ATTACHMENT

Survey of Injunctive and Cease and Desist Powers Available to Federal Agencies

Statutory Procedure	Statutory Criteria for Invocation of Power
1. *Atomic Energy Commission*	
Whenever in the judgment of the Commission a violation has occurred or is about to occur, the Attorney General applies to appropriate court for injunction or order enforcing compliance with the law. Upon showing by the Commission of violation or impending violation a permanent or temporary injunction, restraining order or any other order may be granted.[1]	Any person has engaged in or is about to engage in any acts which constitute or will constitute a violation of provisions of Chapter 23 or regulation or order issued thereunder. (Chapter 23 deals with the development, use and control of atomic energy.)

[1] Atomic Energy Act of 1954 §232, 42 U.S.C. §2280 (1964), 68 Stat. 959.

Statutory Procedure	Statutory Criteria for Invocation of Power
2. *Civil Aeronautics Board*	
a. The board may, on its own initiative or on complaint of air carrier, foreign air carrier, or ticket agent, if it considers such action in the public interest, investigate and determine whether problem exists. If the Board finds, after notice and hearing, that a violation exists, it shall order violators to cease and desist.[2]	Air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.
b. If the Administrator or Board finds non-compliance, after notice and hearing, Administrator or the Board shall issue an appropriate order to compel such person to comply therewith.[3]	Any person has failed to comply with any provision of this chapter (Federal Aviation Program) or any requirement established pursuant thereto.
c. The Administrator or Board applies to United States District Court for enforcement and District Court shall have jurisdiction to enforce by a writ of injunction.[4]	Any person violates provision of chapter or any rule, regulation, requirement or order thereunder.

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[2]Federal Aviation Act of 1958 §411, 49 U.S.C. §1381 (1964), 72 Stat. 769.

[3]*Id.* §1002(c), 49 U.S.C. §1482(c) (1964), 72 Stat. 788.

[4]*Id.* §1007, 49 U.S.C. §1487 (1964), 72 Stat. 796.

Statutory Procedure	Statutory Criteria for Invocation of Power
3. *Commission on Civil Rights*	
The Attorney General institutes a civil action or other proceeding including an application for permanent or temporary injunction, restraining order, or other order.[5]	Any person has engaged in or there is reasonable grounds to believe that he is about to engage in any act which would deprive other persons of a voting right or privilege.
4. *Department of Agriculture*	
a. Secretary shall cause complaint to be served on packer, etc. and designate hearing. Upon finding of violation, the Secretary shall issue cease and desist order which shall be final unless packer within 30 days appeals to Court of Appeals. Court may, on application of Secretary, issue temporary injunction against packer or it may set Secretary's order aside. Court may hold additional hearing. If Court affirms the Secretary, the decree shall operate as an injunction.[6]	Any packer of livestock, meats, meat food products, live poultry, or dealers or handlers thereof engaged in unfair acts, giving unreasonable advantages, creating monopoly, restraining commerce, etc.

[5]Civil Rights Act of 1960, §601(b), as amended, 42 U.S.C. §1971(c) (Supp. II, 1965-66), 79 Stat. 445.

[6]Packers and Stockyards Act, 1921 §§203, 204, 7 U.S.C. §§193, 194 (1964), 42 Stat. 161-62.

Statutory Procedure	Statutory Criteria for Invocation of Power
b. Same as in 4.a., *supra*.[7]	Any person has violated or is violating any provisions of this Act (re labeling requirements, false advertisements, adulteration, etc.) or the rules and regulations promulgated thereunder.
5. *Federal Home Loan Bank Board*	
a. If, in the opinion of the Federal Home Loan Bank Board, there is a violation, the Board may issue and serve a notice of charges and of date at which a hearing will held to determine whether cease and desist should issue. If association does not appear at hearing with representative, it shall be deemed to have consented to issuance. In the event of such consent, or upon a finding that violation has been established, the Board may serve an order to cease and desist. Such order may require association to cease and desist from such and to take affirmative action to correct conditions. Order remains effective until modified, terminated, etc. by Board or reviewing court.	Any association is or has violated, or is about to violate a law, rule, regulation, charter, or other condition imposed in writing by the Board re granting of any application; or is engaging, has engaged or is about to engage in an unsafe or unsound practice.

[7] Federal Seed Act §§409, 410, 7 U.S.C. §§1599, 1600 (1964), 53 Stat. 1287.

Statutory Procedure	Statutory Criteria for Invocation of Power
When Board determines violation is likely to cause insolvency or substantial dissipation of assets of the association or is likely to seriously prejudice the interests of its savings account holders, Board may issue a temporary order requiring the association to cease and desist. Such order is effective immediately upon service and remains effective pending completion of administrative proceedings and until Board dismisses or issues cease and desist. Temporary orders could be stayed by a District Court on application filed within 10 days. Permanent orders issued after hearing, may be appealed to Circuit Court.[8]	
b. The Board shall by formal resolution state any alleged violation of law or regulations, and give written notice to the association concerned. Such association shall have 20 days to correct alleged violations. If the association does not comply within such period, the Board shall give such as-	Violation of any provision of the Section (re organization, incorporation, examination, operation and regulation of Federal Savings and Loan Associations), or rules and regulations made thereunder.

[8] Financial Institutions Supervisory Act of 1966 §101(a), 12 U.S.C. §1464(d) (Supp. II, 1965-66), 80 Stat. 1028.

Statutory Procedure	Statutory Criteria for Invocation of Power
sociation 20 days written notice of a time and place of a hearing. Such hearing will be in the Federal judicial district of the association and conducted by a hearing examiner as provided by the APA. After the notice of violation, either the Board or the association affected may, within 30 days after service of said notice, apply to the U. S. District Court for a declaratory judgment and an injunction or other relief with respect to such controversy.[9]	
c. If, in the opinion of the Board, a violation exists and the Board determines that an emergency exists requiring immediate action, the Board is authorized to appoint *ex parte* and without notice a Supervisory Representative to take charge of said association. Unless sooner removed by the Board such Representative shall hold office until a conservator or receiver appointed by the Board after notice, takes charge of the associa-	Insolvency of association, violation of law or of a regulation under the section, concealment of books, records or assets of association from examiner or agency of FHLBB, or unsafe or unsound operation.

[9] Act of June 13, 1933, ch. 64, §5, 48 Stat. 132. The provision cited was included in the predecessor to §101(a) of the Financial Institution Supervisory Act of 1966, *supra* note 8.

Statutory Procedure	Statutory Criteria for Invocation of Power
tion, or for six months, or until 30 days after the termination of the administrative hearing as herein provided, or until 60 days after the final termination of any litigation affecting such temporary appointment, whichever is longest. The Board shall have the power to appoint a conservator or receiver pursuant to a formal resolution of the Board stating the grounds thereof and after notice thereof is given to association stating the grounds thereof and an opportunity for an administrative hearing therein is afforded to association.[10]	
6. *Federal Savings & Loan Insurance Corporation*	
Same as in 5.a., *supra*.[11]	Same type of violation as in 5. a., *supra*, regarding insured institutions.

[10] *Ibid.*

[11] Financial Institutions Supervisory Act of 1966 §102(a), 12 U.S.C. §1730 (Supp. II, 1965-66), 80 Stat. 1036.

Statutory Procedure	Statutory Criteria for Invocation of Power
7. *Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Comptroller of the Currency.*	
Same procedure by the appropriate Federal banking agency (Comptroller of the Currency in the case of a national banking association, or a district bank; the Board of Governors of the Federal Reserve System in the case of a state member insured bank and the FDIC in the case of a state non-member insured bank) as in 5.a., *supra*.[12]	Same violations as in 5.a., *supra*, regarding insured institutions.
8. *Federal Maritime Commission*	
Whenever the Commission finds that any such rate is demanded it may alter the same to the extent necessary, and make an order that the carrier shall discontinue demanding any such discriminatory rates. Orders shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted on Commission's own motion.[13]	A common carrier by water in foreign commerce has demanded, charged or collected a rate, fare or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the U. S. as compared with their foreign competitors.

[12] *Id.* §§202, 204, 12 U.S.C. §1818 (Supp. II, 1965-66), 80 Stat. 1046, 1054.

[13] The Shipping Act of 1916 §§17, 23, 46 U.S.C. §§816, 822 (1964), 39 Stat. 734, 736.

Statutory Procedure	Statutory Criteria for Invocation of Power
9. *Federal Power Commission*	
Commission may bring an action in proper United States District Court to enjoin. Upon proper showing, a permanent or temporary injunction or decree or restraining order is issued by the Court.[14]	Whenever it appears to Commission that any person is engaged or about to engage in acts violating provisions of Chapter 12 (Federal Power regulations) or any rule, regulation or order thereunder.
10. *Federal Trade Commission*	
a. Whenever the agency vested with jursidiction (ICC, FCC CAB, Federal Reserve Board or FTC) has reason to believe any person violates or has violated the law it shall serve on such person and the Attorney General a complaint and notice of hearing. If upon hearing, the agency finds a violation it shall issue cease and desist orders. Any affected person may obtain review in United States Court of Appeals.[15]	A person is or has violated Sections 13, 14, 18 and 19 of Title 15 (Discrimination in price, service, facilities, rebates, discounts, advertising service charges; undercutting in certain localities; sales contingent on agreement not to use goods of competitors; acquisition of competing companies; interlocking directorates).
b. When Commission has reason to believe that unfair or deceptive practices are engaged in, it shall issue and serve upon violators complaint stating charges and a notice of	A person is using or has used unfair methods of competition or deceptive practices in commerce (in violation of Sections tions 41-46 and 47-58 of Title 15).

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[14] Public Utility Act of 1935 §314, 16 U.S.C. §825m (1964), 49 Stat. 861.

[15] Antitrust Act, 1914 §11, 15 U.S.C. §21(b)-(c) (1964), 38 Stat. 734.

Statutory Procedure	Statutory Criteria for Invocation of Power
hearing. Person has right to appear and show cause why cease and desist order should not be entered. If upon hearing, Commission determines that the practices violate the law, it shall report so in writing and shall issue a cease and desist order. Affected persons may obtain review by U. S. Court of Appeals.[16]	
c. When Commission has reason to believe that a person is engaged or about to engage in prohibited conduct and that the enjoining thereof, pending the issuance of a complaint by the Commission under Section 45 above, is in the public interest the Commission may bring suit in United States District Court for injunction. Upon proper showing, a temporary injunction or restraining order may be granted without bond, except in cases of newspapers, magazines or periodicals when injunction would delay the delivery of such due to customary business practice.[17]	Person is engaged in or is about to engage in dissemination of false advertisements pertaining to food, drugs, devices or cosmetics.

[16] Federal Trade Commission Act §5, 15 U.S.C. §45(b)-(c) (1964), 38 Stat. 719.

[17] *Id.* §13, 15 U.S.C. §53 (1964), 52 Stat. 114.

Statutory Procedure	Statutory Criteria for Invocation of Power
d. Same as above in 10.c., *supra*.[18]	Misbranding wool products.
e. Same as above in 10.c., *supra*.[19]	Misbranding fur products.
f. Same as above in 10.c., *supra*.[20]	Misbranding textile fiber products.
g. Whenever the Commission has reason to believe that any person is violating or is about to violate such rules, and that it would be in the public interest to enjoin such violation until a complaint under the FTC Act is issued and dismissed by the Commission or until an order to cease and desist made thereon by the Commission has become final or is set aside by a court of review, the Commission may bring suit in the District Court to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.[21]	Manufacturing of, offering for sale, or importation of highly inflammable wearing apparel.

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[18] Wool Products Labeling Act of 1939 §7, 15 U.S.C. §68e(b) (1964), 54 Stat. 1131.

[19] Fur Products Labeling Act §9, 15 U.S.C. §69g(b) (1964), 65 Stat. 180.

[20] Textile Fiber Products Identification Act §8, 15 U.S.C. §70f (1964), 72 Stat. 1721.

[21] Flammable Fabrics Act §6, 15 U.S.C. §1195(a) (1964), 67 Stat. 113.

Statutory Procedure	Statutory Criteria for Invocation of Power
11. *Department of Health, Education and Welfare*	
a. The District Courts shall have jurisdiction, for cause shown, and subject to provisions of Section 381 of Title 28 (relating to notice to opposite party) to restrain violation.[22]	Adulteration or misbranding of any food, drug, device or cosmetic in interstate commerce; the introduction or delivery of such articles into interstate commerce; the introduction into interstate commerce; introduction or delivery for introduction into interstate commerce of any new drug without approval of the Secretary of HEW; the manufacture within any territory of any such adulterated or misbranded article, etc. (21 U.S.C. § 331 (1964).
b. Any such article shall be liable to be proceeded against on libel of information and condemned in any District Court. Any article condemned shall, after entry of the decree, be disposed of by destruction or sale as the court may direct.[23]	Same as in 11.a., *supra.*
c. If the Secretary (HEW) after investigation, finds danger he shall promulgate regulations providing for the issuance (to manufacturers, etc. of such class of food) of permits to which shall be attached such	Any class of food contaminated with micro-organisms during manufacturing, processing or packing that may be injurious to health.

[22] 21 U.S.C. §332 (1964), 76 Stat. 784, 793.

[23] 21 U.S.C. §334 (Supp. II, 1965-66), 79 Stat. 232.

Statutory Procedure	Statutory Criteria for Invocation of Power
conditions governing manufacturing, etc. as may be necessary to protect the public health. If conditions of permit are not met, the Secretary shall suspend immediately, upon notice, such permit.[24]	
d. The Secretary of the Treasury shall deliver to the Secretary of HEW, upon his request, samples of food, drugs, etc. being imported, giving notice thereof to the owner who may appear before the Secretary of HEW and have the right to introduce testimony. If the articles are determined to violate the law, the Secretary of Treasury shall cause destruction of any such article unless such articles are exported within 90 days after determination.[25]	Food, drugs, devices and cosmetics imported or offered for import into U. S. that have been manufactured, etc. under unsanitary conditions, or have been forbidden or restricted in sale in the country in which they were produced, or are adulterated or misbranded.
12. *Interstate Commerce Commission*	
a. The Commission is authorized, upon complaint or on its own initiative, but after notice and hearing, to investigate and determine whether any person is in violation. If	Violation of 49 U.S.C. § 5(4) – effectuating the control or management in a common interest of any two or more carriers.

[24] 21 U.S.C. §344 (1964), 52 Stat. 1048.

[25] 21 U.S.C. §381 (1964), 76 Stat. 796.

Statutory Procedure	Statutory Criteria for Invocation of Power
Commission finds violation, it shall by order require such person to take such action as may be necessary, in opinion of Commission, to prevent continuance of such violation. This provision is in addition to and not substitution for, any other enforcement provisions of Chapter.[26]	
b. A complaint by Commission alleging violation of rules is lodged with District Courts which have jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain or compel.[27]	Combinations and consolidation of carriers for pooling or division of traffic in restraint of competition.
c. The Commission applies to the appropriate District Court for enforcement if after a hearing it determines order was regularly made and served and there was a disobedience.[28]	Failure of carriers to obey any order of Commission other than to pay money
d. The Commission is authorized upon a complaint or on its own initiative, after notice	Acquisition of control over carrier by freight forwarders or any other person controlling, con-

[26] Interstate Commerce Act §5, 49 U.S.C. §5(7) (1964), 24 Stat. 380.

[27] *Id.* §5, 49 U.S.C. §5(8) (1964), 24 Stat. 380.

[28] *Id.* §16, 49 U.S.C. §16(12) (1964), formerly 24 Stat. 384.

Statutory Procedure	Statutory Criteria for Invocation of Power
and hearing, to investigate and determine whether any person is in violation. If Commission finds violation, it shall by order require such person to take action as may be necessary to prevent continuance of such violation. Provisions are in addition to, not substitution for any other enforcement provisions.[29]	trolled by, or under common control with a freight forwarder.
e. Commission, Attorney General, or injured party may apply to District Court having jurisdiction of the parties for enforcement of such provision of chapter; court shall have jurisdiction to enforce obedience by writs of injunction.[30]	If any freight forwarder fails to comply with or operates in violation of any provision of chapter. (ICC Act, Part IV, Freight Forwarders).
13. *National Labor Relations Board*	
a. The Board has power, upon the issuance of a complaint by the Board to petition the District Court for appropriate temporary relief or restraining order. Upon filing a petition the Court shall cause notice to be served.[31]	A person has engaged in or is engaging in unfair labor practices.

[29] *Id.* §411, 49 U.S.C. §1011(d), 56 Stat. 293.

[30] 49 U.S.C. §1017(b) (Supp. II, 1965-66), 79 Stat. 650.

[31] Labor-Management Relations Act, 1947 §101, 29 U.S.C. §160(j) (1964), 61 Stat. 146.

Statutory Procedure	Statutory Criteria for Invocation of Power
b. No court shall have jurisdiction to issue a temporary or permanent injunction except after: 1. Hearing of testimony of witnesses in open court (with opportunity for cross-examination) in support of allegations of a complaint and testimony in opposition, if offered; 2. Findings of fact by the court to the effect that – a. unlawful acts have been threatened and will be committed or have been committed and will continue; b. substantial and irreparable injury to complainant's property will follow; c. harm to complainant by denial of relief will be greater than harm to defendants by the granting of relief; d. there is no adequate remedy at law; 3. That public officers charged with duty to protect complainant property are unable or unwilling to furnish adequate protection; 4. Hearing shall be held only after due and personal notice; 5. If a complainant shall allege substantial and irreparable injury to complainant's property will be unavoidable without temporary restraining order – such order may be issued upon testimony under oath.	Any labor dispute.

Statutory Procedure	Statutory Criteria for Invocation of Power
Effective for five days. Complainant must first file an undertaking with adequate security to recompense those enjoined for any loss, expense, damage caused by erroneous issuance.[32]	
c. Complainant, prior to seeking injunctive relief, must have complied with all obligations imposed by law and have made every reasonable effort to settle dispute by negotiation, arbitration or mediation.[33]	Any labor dispute.
d. No injunction or restraining order shall be granted except on basis of findings of facts made by Court and specifically limited.[34]	Any labor dispute.
e. Review by the circuit court. Appeal shall be heard and temporary injunction affirmed, modified or set aside with greatest possible expedition, giving precedence over all other cases.[35]	Temporary injunction under 29 U.S.C. § 107 (1964). Appeal by labor.

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[32]Norris-La Guardia Act §7, 29 U.S.C. §107 (1964), 47 Stat. 71.

[33]*Id.* §8, 29 U.S.C. §108 (1964), 47 Stat. 72.

[34]*Id.* §9, 29 U.S.C. §109 (1964), 47 Stat. 72.

[35]*Id.* §10, 29 U.S.C. §110 (1964), 47 Stat. 72.

Statutory Procedure	Statutory Criteria for Invocation of Power
f. No court can have jurisdiction to enjoin from doing any of the following acts – a. refusing to work; b. becoming member of labor union; c. paying participants in labor dispute; d. aiding, by unlawful means, participants in labor dispute; e. giving publicity to existence of any dispute; f. assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.[36]	Any labor dispute.
g. After notice and service of a complaint and a hearing concluding, upon a preponderance of the testimony taken by the Board, that an unfair practice exists, the Board shall issue cease and desist orders and take such affirmative action as will effectuate policies of the subchapter.[37]	A person has engaged in or is engaging in unfair labor practices.
h. When a violation is charged, preliminary investigation shall be made forthwith by the Board and given priority over all cases. If after investigation, the officer to whom matter may be referred has reasonable cause to believe	A person has engaged in an unfair labor practice within the meaning of paragraph (A), (B) or (C) of Section 158 (b) of 29 U.S.C. E.g., paragraph (4)(A) deals with a person forcing or requiring any employer or self-employed person to join

[36] *Id.* §4, 29 U.S.C. §104 (1964), 47 Stat. 70.

[37] 29 U.S.C. §160(c) (1964), 48 Stat. 926.

Statutory Procedure	Statutory Criteria for Invocation of Power
the violation exists and that a complaint should be issued, he shall petition District Court for appropriate injunctive relief pending final adjudication of the Board with respect to such matter. No temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such restraining order shall be effective for no longer than five days.[38]	labor or employer organization or to enter agreement (prohibited by 158(c)) where such employer ceases or agrees to cease handling, using, selling, transporting products of any other employer. Paragraph (4)(C) deals with forcing or requiring any employer to recognize or bargain with a particular labor organization or for a labor organization to picket or cause to be picketed any employer where an object thereof is forcing the employer to recognize or bargain with a labor organization.
i. Upon receiving report from a board of inquiry, President may direct Attorney General to petition District Court to enjoin.[39]	Threatened or actual strike or lockout affecting entirely or substantially an industry engaged in trade, commerce, transportation or communications (among any states or with foreign nations) or engaged in production of goods for commerce which if continued would imperil national health or safety.
j. The appropriate District Courts have jurisdcition, for cause shown, to restrain violations.[40]	Any violations and provisions re Minimum Wage, Maximum Hours, Child Labor, etc.

[38] 29 U.S.C. §160(1) (1964), 73 Stat. 544.

[39] Labor Management Relations Act, 1947 §208, 29 U.S.C. §178 (1964), 61 Stat. 155.

[40] Fair Labor Standards Act of 1938 §17, as amended, 29 U.S.C. §217 (1964), 75 Stat. 74.

Statutory Procedure	Statutory Criteria for Invocation of Power
14. *Securities Exchange Commission*	
a. The Commission brings action in District Court. If its allegations are established, the Court shall enjoin (permanently or temporarily) such person from acting in such capacity.[41]	Person guilty of gross misconduct or gross abuse of trust in re any registered investment company for which such person serves as officer, director, advisory board, investment adviser or depositor or principal underwriter.
b. Same as in 14.a., *supra*.[42]	Any violation of subchapter (Investment Companies), or rule, regulation, or order thereunder.
c. The Commission may, in its discretion, bring action in District Court. Upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted.[43]	Any person is engaged in any acts or practices which constitute or will constitute a violation of the provisions of Subchapter I (Domestic Securities) of Chapter 2A, 15 U.S.C. §§ 77a-77aa, or rules, regulations and orders thereunder.
d. Same as in 14.c., *supra*.[44]	Any person is engaged in any acts or practices which constitute or will constitute a violation of the provisions of Chapter 2B (Securities Exchanges), 15 U.S.C. §§ 78a-78hh, or rules, regulations and orders thereunder.

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[41] Investment Company Act of 1940 §36, 15 U.S.C. §80a-35 (1964), 54 Stat. 841.

[42] *Id.* §42, 15 U.S.C. §80a-41 (1964), 54 Stat. 842.

[43] Securities Act of 1933 §20, 15 U.S.C. §77t (1964), 48 Stat. 86.

[44] Securities Exchange Act of 1934 §21, 15 U.S.C. §78u(e) (1964), 48 Stat. 899.

Statutory Procedure	Statutory Criteria for Invocation of Power
e. Same as in 14.c., *supra*.[45]	Any person is engaged in any acts or practices which constitute or will constitute a violation of the provisions of Chapter 2C (Public Utility Holding Companies), 15 U.S.C. §§ 79-79z-6, or rules, regulations and orders thereunder.
f. Same as in 14.c., *supra*.[46]	Any person is engaged in any acts or practices which constitute or will constitute a violation of the provisions of Subchapter II (Investment Advisers) of Chapter 2D, 15 U.S.C. §§ 80b-1 - 80b-21, or rules, regulations and orders thereunder.
15. *Small Business Administration*	
a. After an Order to Show Cause has been served upon licensee involved, containing a statement of matters of fact and law asserted, and notice of hearing, and after such hearing has been held concluding a noncompliance, the Administration may order licensee to cease and desist.[47]	Noncompliance with any provision of Chapter (representing all statutory material re Small Business Administration, enacted to aid, counsel, assist, protect and preserve free competition and enterprise) or any regulation issued thereunder.

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[45] Public Utility Holding Company Act of 1935 §18, 15 U.S.C. §79r(f) (1964), 49 Stat. 831.

[46] Investment Advisers Act of 1940 §209, 15 U.S.C. §80b-9(e) (1964), 54 Stat. 853.

[47] Small Business Investment Act of 1958 §4, as amended, 15 U.S.C. §687a(b)-(c) (Supp. II, 1965-66), 80 Stat. 1359.

Statutory Procedure	Statutory Criteria for Invocation of Power
b. Administration applies to District Court, and upon a showing, permanent or temporary injunction, restraining order may be issued.[48]	A licensee has engaged in, or is about to engage in, act violating Chapter, rule, regulations or order.
16. *Tennessee Valley Authority*	
The corporation has authority to bring appropriate proceedings in District Court to prevent, discontinue or remove unlawful construction.[49]	The construction of appurtenant works, etc., without approval or beyond approval of Board.
17. *Federal Communications Commission*	
The Commission may order such person to cease and desist from such action. Before issuing such order, the Commission shall serve an order to show cause containing the charges and calling the person to appear at a hearing no less than thirty days after the order; when safety of life or property is involved shorter notice may be given. Cease and desist order may be issued after hearing or waiver thereof and must be accompanied by findings.[50]	Where any person (1) has failed to operate as set forth in a license, (2) has violated or failed to observe any of the provisions of the Communications Act or Sections 1304, 1343 or 1464 of Title 18, U.S. Code (broadcasting lottery information, fraudulent or obscene materials), or (3) has violated or failed to observe any rule or regulation of the Commission authorized by the Communications Act or U. S. treaty.

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[48] *Id.* §311, 15 U.S.C. §687c(a) (1964), 75 Stat. 753.

[49] Tennessee Valley Authority Act of 1933 §26a, 16 U.S.C. §831y-1 (1964), 49 Stat. 1079.

[50] Federal Communications Act of 1934 §312, as amended, 47 U.S.C. §§312(b), (c) (1964), 66 Stat. 716.